IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

SUIT NO. 1537 OF 1984

Konkan Fisheries P.Ltd .....Plffs.
vs.
M/s. S.I. Ahmed and Co.and Ors. .....Defnds.

T.A. Bhavsar i/b. Crawford Bayley and Co. for the plaintiffs.

None for the defendants.

CORAM: S.U. KAMDAR, J.

DATE : 11TH AUGUST, 2005.

P.C. :

1. The present suit is filed for the recovery of sum of Rs.1,26,882.63/- with interest on the principal amount of Rs.1,00,000/- at the rate of 25% p.a. from the date of the suit till payment and/or relisation. Some of the material facts of the present case are as under :

2. Some time in or about May, 1983 an agreement

was arrived at between the plaintiff and the defendant for purchase of 1000 master cartons containing 20 kg,. each of silver pomfrets at the rate of 27 per k.g. It was agreed under the said contract that the cartons lying with the plaintiff will be first inspected by the representative of the fist defendant and thereafter the same will be purchased. The second defendant also agreed to pay Rs.10,000/- by way of an advance under the said contract. On 21.5.83 the said agreement has ben recorded by the plaintiff in writing and requested that the export inspection agency, Ratnagiri to inspect the goods and certify the same.

3. Thereafter the first defendant sent the representative of the plaintiff at the warehouse at Ratnagiri and inspected the entire consignment of 1,000 master cartons. The representative also took random sample of 60 cartons of the said consignment. Soon thereafter the first defendant returned to Bombay and the plaintiff received a phone call

from the first defendant that the said consignment has been arrived. Accordingly the said goods were despatched on 4.6.83 by the plaintiff to the first defendant under three consignments and the defendant took delivery of the said consignment of 1000 master cartons. In view of the aforesaid the plaintiff performed their part of the contract dated 7.6.83 and issued their invoice for Rs.5,40,000/- being price due and payable inrepsect of the goods sold and delivered. After adjustment of Rs.10,000/- the balance amount of Rs.5,30,000/- was due and payable within 72 hours of the delivery of the said goods. The first defendant paid to the plaintiff a sum of Rs.2,00,000/- as and by way of part payment on 12.6.83 but did not make payment of the balance amount of Rs.3,40,000/-. Sometime in or about June 1983 the first defendant sent a telex to the plaintiff inter-alia contending that they have received the complaints from foreign buyers inrespect of 8 cartons and that the said cartons contained black pomfrets instead of silver

pomfrets. There were certain other complaints were also received regarding the colour of the pomfret is yellowish and it indicated that the same were very old. In the aforesaid circumstances the defendant has withheld the said amount and did not make payment thereof.

4. However on 26.7.83 the first defendant made further part payment of Rs.2,31,000/- leaving balance amount of Rs.1,09,000/-. Out of the said balance amount a sum of Rs.9000/- was required to be adjusted against the transportation charges and thus according to the plaintiff the balance amount was due and payable is Rs.1,00,000/- However since no payment was received the plaintiff addressed a letter on 19.,8.83 to Marine Products Export Development Authority to prevail upon the first defendant to make payment of the balance of the amount of Rs.1 lakh. On 13.9.83 the first defendant addressed a letter in which it is admitted that they had checked the consignment but disputed the liability to pay. In view of the aforesaid

position the plaintiff issued a notice dated 15.9.83 and called upon the defendant to make payment. However since the said payment was not made the plaintiff has filed the suit for the balance amount of Rs.1,00,000/- with interest at the rate of 24% p.,a. The defendants have filed written statement inter-alia alleging that the goods which were meant for export to the buyers were found defective. Some of them contained black pomfrets and some of the goods were not of a merchantable quality and thus it has been contended that the defendant is not liable to make payment. On 2.8.2005 issues were framed. The plaintiff has filed a compilation of documents and affidavit of evidence of Mr. Vinod Chandgadkar in examination-in-chief.

5. This matter was on board on 26.7.2005, 29.7.2005,2.8.2005, 9.8.2005, 10.8.2005 and today, In view of the fact that none appeared for the defendants on the aforesaid occasions I directed the learned counsel to give notice to

the advocate for the defendant. The said notice was accordingly issued on 3.8.2005. But the said notice was not accepted by the advocate for the defendants. I further asked the plaintiffs advocate to give personal notice to each of the defendant. When the notice was sought to be served it was found that the defendants are no longer available on the said address. An affidavit of service dated 11.8.2005 is tendered on record. In the aforesaid circumstances I am required to pass ex-parte decree against the defendants and I accordingly pass the following decree :

> There shall be a decree in favour of the plaintiffs against the defendants for a sum of Rs.1,26,882.63/- with further interest @ 12% p.a. on the principal amount of Rs.1,00,000/- from the date of the filing of the suit till

payment and or realisation.

No order as to costs.

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